

FLORENCE T. NAKAKUNI #2286  
United States Attorney  
District of Hawaii

LESLIE E. OSBORNE, JR. #3740  
Chief, Fraud & Financial Crimes Section

KENNETH M. SORENSON  
Assistant U.S. Attorney  
Room 6-100, PJKK Federal Building  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850  
Telephone: (808) 541-2850  
Facsimile: (808) 541-2958  
Email: [ken.sorenson@usdoj.gov](mailto:ken.sorenson@usdoj.gov)

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA	)	CR. NO. 14-00010-01 HG
	)	
Plaintiff,	)	GOVERNMENT'S COLLECTIVE
	)	RESPONSE TO DEFENDANT
vs.	)	JENNIFER MCTIGUE'S
	)	VARIOUS MOTIONS FILED IN
JENNIFER ANN MCTIGUE, (01)	)	COURT DOCUMENTS 68
	)	AND 69; DECLARATION OF
Defendant.	)	KENNETH M. SORENSON;
	)	CERTIFICATE OF SERVICE

**GOVERNMENT'S COLLECTIVE RESPONSE TO DEFENDANT  
JENNIFER MCTIGUE'S VARIOUS MOTIONS  
FILED IN COURT DOCUMENTS 68 AND 69**

**GOVERNMENT'S COLLECTIVE RESPONSE TO DEFENDANT  
JENNIFER MCTIGUE'S VARIOUS MOTIONS  
FILED IN COURT DOCUMENTS 68 AND 69**

Defendant Jennifer McTigue has filed a collective group of motions before the Court asserting a variety of claims and defenses. Document 68 is styled, in part, "OMNIBUS MOTION TO SUPPRESS EVIDENCE AND FOR RETURN OF SEIZED PROPERTY ... ." Document 69 is styled, in part, "OMNIBUS MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, TERRITORIAL AND LEGISLATIVE JURISDICTION ... ." Each motion is supported by affidavits which assert facts and make independent demands, along with various other arguably supportive documents. For the reasons set forth below, McTigue's motions must be denied.

**I. RELEVANT FACTS**

McTigue, Marc Melton and Sakara Blackwell devised a scheme to defraud mortgage companies, escrow companies and good faith purchasers of real estate they controlled by fraudulently releasing valid mortgages recorded with the Hawaii Bureau of Conveyances. The

scheme began when Blackwell, who was in default on her \$800,000 plus in mortgages with J.P. Morgan Chase and Bank of America, arranged with McTigue and Melton to fraudulently release her mortgages by recording fake "Satisfaction of Mortgage" forms with the Hawaii Bureau of Conveyances. The fake "Satisfaction of Mortgage" was signed by Melton, falsely representing himself to be the Authorized Representative of Mortgage Electronic Services, (MERS) the company representing J.P. Morgan Chase and Bank of America's interests with respect to the loan. In truth and fact, Melton was not employed by MERS or any banking institution, and had no authority to release the duly recorded mortgages of any financial institution. Once the mortgage was unlawfully and fraudulently released, McTigue, Melton and Blackwell sold the property and enjoyed a windfall profit since they did not have to pay the existing mortgage. The properties were sold with full warranty deeds falsely promising the properties to be free of liens and encumbrances.

The scheme ultimately encompassed seven (7) properties and was augmented by the mailing of so called "Note Tender Agreements," "EFT Tender Agreements" or "Mortgage Debt Satisfaction Agreements" to holders of mortgages which purported to pay-off the outstanding mortgage debt by including a bad check written on a non-existent or dormant bank account. These so named agreements warned mortgage holders that if they did not respond to the mailing of the agreements within two weeks then Melton, or others, would have authority to administer the loan. With this plausible defense built into their fraud scheme, McTigue, Melton and Blackwell ultimately released mortgages on seven (7) properties and made in excess of \$3 million dollars, which they jointly shared.<sup>1</sup>

---

<sup>1</sup> Rather than rehash the particulars of the seven separate fraudulent loan releases, the government directs the Court's attention to the Indictment which sets forth in detail the particulars of the scheme in the Manner and Means Section at pages 3-7, and the Overt Acts section at pages 7-22.

## **II. RELEVANT PROCEDURAL and INVESTIGATIVE HISTORY**

The investigation was supervised by the undersigned government counsel with the Federal Bureau of Investigation. On or about September 23, 2013, the government executed three search warrants on email accounts held by McTigue, [jennwealth@gmail.com](mailto:jennwealth@gmail.com); [jenn.mctigue@gmail.com](mailto:jenn.mctigue@gmail.com); and [nekaicorp@gmail.com](mailto:nekaicorp@gmail.com). While difficult to discern, it appears that evidence derived from the execution of these warrants is the subject matter of at least one of McTigue's motions.<sup>2</sup> The government conducted subsequent investigation acquiring records through the grand jury process and on January 3, 2014 a federal grand jury issued a *sealed* indictment against McTigue, Melton and Blackwell on the instant charges. On January 7, 2014, prior to their arrest and notice of the Indictment in this case, the FBI obtained a series of search and seizure warrants on Mctigue's residence, safe deposit box and life insurance accounts.

---

<sup>2</sup> McTigue's motion refers to an "administrative subpoena." She may misunderstand how the government obtained her electronic communications.

The warrants were accompanied by a motion requesting sealing of the search and seizure warrants, supported by a declaration of government counsel citing the reasons for the request to seal the warrants. The Declaration recited the standard basis for the request to seal, *ie.* that the investigation was not complete and that disclosure of the existence of the warrants would negatively affect the investigation. The Declaration stated, "I am informed and believe that said investigation is ongoing and will continue beyond the date of service of the warrant and filing of the return thereon until the matter is presented to the grand jury for indictment or other disposition." McTigue appears to seize upon this statement in advancing her theory that the Indictment was never actually *presented* to the grand jury. In McTigue's view, this theory is advanced by the fact that she cannot see the grand jury foreperson's signature on the Indictment.<sup>3</sup> While difficult to discern, this may be

---

<sup>3</sup> As the Court is aware, the United States District Court has Ordered that Grand Jury foreperson signatures

the basis that McTigue continually refers to the Indictment as "fictitious."

**III. DOCUMENT 68 CONTENTIONS**

**A. The Government Did Not Violate the Notice Provisions of the Electronic Communications Privacy Act**

McTigue first contends that FBI Special Agent Nick Baron "violated PUBLIC POLICY Title 2703(b)" by issuing an administrative subpoena for electronically stored data. [Doc. 68, pp. 3-4.] McTigue then contends that she did not receive notice, as she asserts is due under 18 U.S.C. § 2703(b)(1)(B). It is unclear what to what "administrative subpoena" McTigue is referring since the government did not issue any such subpoenas in this case. It is true that had the United States obtained the contents of McTigue's electronic communications with an administrative subpoena than the notice provisions of 18 U.S.C. § 2703(b)(1)(B) would apply. However, the United States acquired all electronic communications evidence

---

shall be recorded on the back of the last page of the Indictment to protect their identity.

in this case (ie. emails) through search warrants executed on McTigue's email accounts. No notice is required when a warrant is obtained, as here, under the Federal Rules of Criminal Procedure. See 18 U.S.C. § 2703(b)(1)(A). Accordingly, McTigue's notice contentions under are meritless.

**B. McTigue's Allegations in Paragraphs 9, 10, 11 and 12 of Motion**

Paragraph 9. McTigue contends that FBI Special Agent Nick Baron used the "fruits of his unlawful search and seizure to obtain further search and seizure warrant in violation of her constitutional rights. The basis for this contention is unclear but it appears that McTigue is asserting that because administrative subpoenas were used to acquire her emails and that she did not get notice than all evidence garnered through the process must be suppressed. However, as argued above, because no administrative subpoenas were executed in this case, no notice was required.

Paragraph 10. McTigue contends that Special Agent Baron violated Rules 41(b), 41(c) and 41(d)(2)(B)



and (C), because he failed to provide a valid affidavit and for failure to record testimony given or a valid transcript under Rule 41(d)(2)(C). It is assumed by government counsel that McTigue is referring to Rule 41 of the Federal Rules of Criminal Procedure. McTigue has failed to particularize her argument, and it is impossible to discern specifically what her contentions are. All affidavits in this case were executed under oath before the respective magistrate judges. There is no requirement that testimony be recorded or a valid transcript be generated since all of the government's warrants were based on affidavits. See Fed. R. Crim. P. 41(d)(2)(A). Accordingly, this contention lacks merit as well.

Paragraph 11. McTigue contends that government counsel filed a "fictitious indictment" after admitting that a grand jury had not been convened. This contention is patently ridiculous and not factually supported. The Indictment indicates itself that it was filed with the Court on January 3, 2014 and that it was

signed by the foreperson, government counsel and Leslie Osborne, Chief of the Fraud and Financial Crimes Section of the United States Attorney's Office.

Paragraph 12. McTigue charges that government counsel "continues to violation PUBLIC POLICY by concealing facts and discoverable exculpatory evidence from McTigue ... ." McTigue has failed to demonstrate how government counsel has failed to provide lawfully discoverable information to her. The government has provided McTigue with all discovery due to her under Fed. R. Crim. P. 16. The government, at this juncture, has uncovered no information that could be determined to be exculpatory or impeachment information. Government counsel recognizes the ongoing duty of the government to provide such information should it be discovered.

Further, McTigue's specific contention that government counsel must provide information to her related to the "United States Standard General Ledger" is unsupported either factually or legally. McTigue

has failed to lucidly demonstrate how the USSGL is applicable to her case or any defense she might raise.

#### **IV. DOCUMENT 69 CONTENTIONS**

Document 69 is a motion to dismiss for "LACK OF SUBJECT MATTER JURISDICTION, TERRITORIAL AND LEGISLATIVE JURISDICTION, AND IN PERSONAM JURISDICTION, DUE TO GROSS VIOLATIONS OF PUBLIC POLICY, FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 12(B)(3)(b) AND LOCAL RULE 47. At its core, Document 69 is an attack on the Court's jurisdiction to hear this case, or probably any other case for that matter. McTigue contends that this Court operates as a "Territorial Court and as a branch/franchise of the JUDICIARY COURTS OF THE STATE OF HAWAII, lacking original jurisdiction over criminal matters as established by PUBLIC POLICY Title 18 § 3231." [Doc. 69, p. 3]

Government counsel does not intend to belabor McTigue's meritless contentions beyond stating that this Court is a duly appointed United States District Court and as such it has original jurisdiction over

"all offenses against the laws of the United States".

See 18 U.S.C. § 3231. The offenses alleged in this case, wire fraud, mail fraud and money laundering are all offenses "against the laws of the United States."

See 18 U.S.C. §§ 1341, 1343, 1956(h) and 1957.

Accordingly, this Court has proper jurisdiction to hear and dispose of this case.

The District of Hawaii is also the proper venue for disposal of this case, since one or more of the criminal acts alleged were committed in this district.

Fed. R. Crim. P. 18. See also, 18 U.S.C. § 3237(a) which provides:

- (a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Since all of the offenses charged herein were either begun in Hawaii or completed in Hawaii, venue is proper in this District.

**V. CONCLUSION**

For the reasons set forth above, McTigue's motions as set forth in Documents 68 and 69 should be denied and dismissed.

DATED: September 15, 2014, at Honolulu,  
Hawaii.

FLORENCE T. NAKAKUNI  
United States Attorney  
District of Hawaii

By/s/ Kenneth M. Sorenson  
KENNETH M. SORENSON  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Jennifer Ann McTigue  
c/o NEKAI CORPORATION  
1050 Bishop Street, Suite 188  
Honolulu, Hawaii 96813

Served Electronically through CM/ECF:

Alvin Nishimura, Esq.

Stand by Counsel for Defendant  
JENNIFER ANN MCTIGUE

DATED: September 15, 2014, at Honolulu,  
Hawaii.

\_/s/ Melena Malunao